SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 970

GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL.,

vs.

JOSEPH LANKSTON WILLIAMS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Great Southern Life Insurance Company, a corporation, organized under the laws of the State of Texas, and Phillips Petroleum Company, a corporation, organized under the laws of the State of Delaware, pray this Court for the issuance of a writ of certiorari to review a final judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered on the 13th day of December, 1941, reversing a judgment of dismissal of the

United States District Court for the Northern District of Texas and remanding this case to the United States District Court for the Northern District of Texas for further proceedings.

Statement of the Matter Involved.

The matter involved herein is the construction of the definition of "farmer" as contained in Section 75 (r) of the Bankruptcy Act (11 U. S. C. A. Section 203r) and the determination of whether or not a landlord who receives the principal part of his income from leasing lands to tenants and who performs the usual activities of a landlord is a "farmer" within that definition.

On October 19, 1940, debtor Williams filed in the United States District Court for the Northern District of Texas, Amarillo Division, his petition for composition or extension under Section 75 of the Bankruptcy Act (Tr. 1-21), alleging "That he is personally bona fide engaged primarily in farming operations (and that the principal part of his income is derived from farming operations) as follows: from ranching operations in Hutchinson and Moore Counties, Texas, and *in the rental thereof,* and in farming operations in Potter and Sherman Counties, Texas, and Texas County, Oklahoma, for wheat farming and *in the rental thereof;*" (Tr. 2). On October 21, 1940, the creditors, Great Southern Life Insurance Company and Phillips Petroleum Company, filed a motion to dismiss debtor's proceedings on the ground that Williams was not a "farmer" as defined in Section 75 (r) of the Bankruptcy Act, and that the Court had no jurisdiction of the proceedings (Tr. 21-23).

After a hearing before the Court, the District Court, on February 12, 1941, entered an order finding as a fact that the respondent, Williams, was not a farmer, and dismissing the proceeding (Tr. 24). Respondent, Williams, appealed from this judgment of dismissal to the Honorable Circuit

Court of Appeals for the Fifth Circuit. On December 13, 1941, this Court entered a judgment and rendered an opinion reversing the District Court and remanding the case for further proceedings, on the ground that respondent, Williams, was a farmer and entitled to maintain his proceeding under Section 75 of the Bankruptcy Act (Tr. 195, 191).

Basis of Jurisdiction.

The judgment sought to be reviewed is the judgment of the United States Circuit Court of Appeals for the Fifth Circuit rendered on the 13th day of December, 1941 (Tr. 195), reversing the judgment of dismissal of the United States District Court for the Northern District of Texas, Amarillo Division, and remanding this case to such Court for further proceedings under Section 75 of the Bankruptcy Act (11 U. S. C. A. Section 203). The nature of the case is set out under the preceding statement of the matter involved, and is one involving the construction of the definition of "farmer" contained in Section 75 (r) of the Bankruptcy Act to determine whether respondent, Williams, as a landlord receiving the principal part of his income from rentals from leases is a "farmer" entitled to the benefits of such Act. The order of dismissal entered by the United States District Court for the Northern District of Texas reflects that such Court found that Williams was not a farmer within the meaning of the definition in Section 75 (r). The opinion of the Fifth Circuit Court of Appeals (Tr. 191) (124 Fed. 2d, 38) reflects the decision of such Court to be that Section 75 (r) should be construed to include as a farmer persons who are engaged in the activities which Williams engaged in as a landlord and who received the principal part of their income from leasing lands to tenants for cash and share rentals. The Petition for Rehearing was filed by the petitioners herein on the 2nd day of January, 1942 (Tr. 196) and was denied on January 12,

1942 (Tr. 212). Petition for Writ of Certiorari is presented herein on the 24th day of February, 1942.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Section 1 (43 Stat. 938) (28 U. S. C. A. Section 347). *First National Bank & Trust Company* v. *Beach,* 301 U. S. 435, 57 S. Ct. 801, 81 L. Ed. 1206.

Questions Presented.

I.

Is a landlord who has no control or supervision over his tenants and whose only activities in relation to his lands consist of leasing the same under oral and written leases to third persons for cash and grain rentals, and performing the usual activities of a landlord, a "farmer" within the definition enumerated in Section 75 (r) of the Bankruptcy Act (11 U. S. C. A. Section 203)?

II.

Is a landlord who receives the principal part of his income from leasing lands to tenants for a consideration of cash rent and grain rent a "farmer" under the second portion of the definition enumerated in Section 75 (r) of the Bankruptcy Act, as one "the principal part of whose income is derived from any one or more of the foregoing operations"?

III.

Is a landlord sixty-eight years of age who maintains a residence and office in Amarillo, Potter County, Texas, who up to recent years managed properties for estates and individuals, procured right-of-way for the Rock Island Railroad, bought and sold lands on commission, who own on livestock of any description and no farming implements or implements of husbandry, but who owns an interest in a ranch of 8,156 acres in Hutchinson and Moore Counties,

Texas, which is leased for cash rent to a tenant and who owns three farms, in Potter County, Texas, Sherman County, Texas, and Texas County, Oklahoma, which are leased to tenants for a rental of one-third of the crops harvested delivered free of cost at the elevator, and who visits his lands to see that he receives his crop rent, and who discusses conditions of erosion with his tenants, and who in one isolated instance in 1940 hired third parties to combine some wheat that was left uncut by a tenant who breached the rental contract and abandoned the premises, and who in 1938 in one isolated instance leased land to a tenant and under the terms of said lease furnished seed and fuel for a one-half interest in the crops, and who in one instance in the past five years scattered by the handful some grasshopper poison, an "individual who is primarily bona fide personally engaged in producing products of the soil" or the receipt of the rentals that accrue under the leases on his lands makes him one "the principal part of whose income is derived from" being "primarily bona fide personally engaged in producing products of the soil", within the compass of the definition of farmer contained in Section 75 (r) of the Bankruptcy Act?

IV.

Do the personal farming activities of a tenant constitute by themselves the personal engagement in such activities by the tenant's landlord to qualify the landlord as a "farmer" within the definition of Section 75 (r) of the Bankruptcy Act?

Reasons Relied On for the Allowance of the Writ.

Reason I is germane to Questions Nos. I, III and IV.

REASON I.

The judgment and decision of the Circuit Court of Appeals herein to the effect that a landlord who leases all of

his farm properties for cash and grain rentals, and who does the usual things done by a landlord in looking after his property and collecting his rentals and who has no other gainful occupation is primarily bona fide personally engaged in one or more of the farming activities enumerated in Section 75 (r) of the Bankruptcy Act, conflicts with a prior decision (hereinafter cited) of another Circuit Court of Appeals and with prior and contemporaneous decisions (hereinafter cited) of the Circuit Court of Appeals for the Fifth Circuit. The decision and holding of the Circuit Court of Appeals in this case is in conflict with the holding and decision of the Ninth Circuit Court of Appeals in the case of *Shyvers* v. *Security First National Bank of Los Angeles,* 108 F. (2d) 611 (9th C. C. A.) Writ of Certiorari denied March 4, 1940; 309 U. S. 668. 60 Sup. Ct. 608, 84 L. Ed. 1015, in that the *Shyvers* case holds that a landlord who leases her farm properties to tenants through an agent who collects the rentals is not bona fide primarily personally engaged in any of the farming activities enumerated in the definition. The holding also conflicts with the prior holding of the United States District Court in the case of *In Re Olson,* 21 Fed. Supp. 505 (N. D. Ia.). The decision in this case is in conflict with the prior decision of the Fifth Circuit Court of Appeals in the case of *Baxter* v. *Savings Bank of Utica, N. Y.,* 92 F. (2d) 404 (5th C. C. A.), which holds that a landlord who is engaged in the management of properties, including the superintendence of the farming operations of farm properties, is engaged in the occupation of "property management" and is not bona fide primarily personally engaged in any of the farming operations enumerated in the definition of "farmer" in Section 75 (r) of the Bankruptcy Act. The decision in this case is in conflict with the contemporaneous decision of the Fifth Circuit Court of Appeals in the case of *Dimmitt* v. *Great*

Southern Life Insurance Company, et al., 124 F. (2d) 40, rendered on the same day, which holds that a landlord who leases his land for a cash rental and whose activities involved the receipt of rentals after the payment of repairs and upkeep, and who has no other occupation, is not primarily bona fide personally engaged in "farming" and is not a farmer within the meaning of Section 75 (r) of the Bankruptcy Act.

Reason II.

Reason II is germane to Question No. II.

The judgment and decision of the Circuit Court of Appeals herein to the effect that the receipt of the principal part of his income from leasing farm properties to tenants for cash and grain rentals by respondent, Williams, constituted him a farmer within the meaning of Section 75 (r) of the Bankruptcy Act, is in conflict with the prior decision of the Circuit Court of Appeals for the Ninth Circuit Court in the case of *Shyvers* v. *Security First National Bank of Los Angeles,* 108 F. (2d) 611 (9th C. C. A.). Writ of Certiorari denied March 4, 1940; 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015. The Ninth Circuit Court of Appeals in the *Shyvers* case held that a landlord who received the principal part of her income from the rental of farm properties was not one, "the principal part of whose income is derived from any one or more of the foregoing operations" to constitute her a "farmer" within that portion of the definition of "farmer" in Section 75 (r) of the Bankruptcy Act. The decision is also in conflict with the following decisions of the United States District Courts: *In Re Olson,* 21 Fed. Supp. 504 (N. D. Ia.); *In Re Joyce,* 36 Fed. Supp., 113 (N. D. La.); *In Re Davis,* 22 Fed. Supp. 12 (N. D. Ia.).

Reason III.

Reason III is germane to Questions Nos. I to IV, both inclusive.

The Honorable Circuit Court of Appeals has decided an important question of Federal Law involving the construction of Section 75 (r) of the Bankruptcy Act and extending the definition of "farmer" and the benefits of Section 75 to that large class of individuals who as landlords lease their lands to tenants for a consideration of a percentage of the crops produced by the tenant, affecting creditors of such individuals, which important question has not been, but should be, settled by the Supreme Court. The importance of the question is apparent from the large number of individuals affected by the decision who are not, in common parlance or in fact, deemed to be farmers at all, and from the social and economic implications involved in extending the benefits of the Act to individuals who own no livestock or farm implements of any description, who are not themselves engaged in producing products of the soil, and whose activities in relation to their land investments are limited to leasing the same to tenants for a consideration of a percentage interest in crops produced by the tenants.

The decision also presents the subsidiary questions as to what rentals are to be embraced within the definition of the term "farmer" and what activities on the part of the landlord in protecting his reversionary interests in the land and in collecting his percentage interest in the crops produced by the tenants are necessary to qualify him as a "farmer" under the applicable definition. These subsidiary questions also arise by virtue of the decision in the contemporaneous *Dimmitt* case, wherein it was held that a landlord who leased his land for cash rent is not a farmer under the definition contained in Section 75 (r).

The court in this case did not base its decision on the ground that the principal part of the income of the debtor was from cash and crop rentals of his lands, although it found such to be a fact. If such fact is material under the second portion of the definition which provides, "or the principal part of whose income is derived from any one or more of the foregoing operations", then an important question is presented involving the construction of the above quoted portion of the definition. Again the importance is apparent, not only because of the conflict of the holding of this case with the holding of the *Shyvers* case, but because of the large class of debtors and creditors affected.

It is of the utmost importance that the status of landlords be definitely settled by the Supreme Court in order that the bar, the Courts, and the individual debtors and creditors may know the status of such class under the Frazier-Lemke Emergency Act, thus preventing intolerable confusion which inevitably results from the decision in question, the decision in the *Dimmitt* case, and the conflicting decisions hereinbefore mentioned.

Prayer for Writ.

Wherefore, your petitioners pray that a Writ of Certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said United States Circuit Court of Appeals, Fifth Circuit, had in the case numbered and entitled on its docket, No. 9894, Joseph Lankston Williams, Debtor, Appellant, vs. Great Southern Life Insurance Company, et al., Appellees, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and to the end that an important

question of Federal Law, involving the construction of a Federal Statute relating to the determination of whether the class of individuals ordinarily known as landlords are entitled to the benefits accorded to "farmers" under Section 75 of the Bankruptcy Act, and that an end be put to the conflict in the decisions of the various Circuit Courts of Appeal and inferior courts; and that the judgment herein of the United States Circuit Court of Appeals, Fifth Circuit, be reversed by the Court, and the judgment of the United States District Court, Northern District of Texas, Amarillo Division, be affirmed by the Court, and for such further relief as to this Court may seem proper.

Dated, February 24, 1942.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, rendered on December 13, 1941, appears at page 191 of the record, and is reported in 124 Federal (2d) 38.

II.

Jurisdiction.

A statement of the grounds of jurisdiction is contained in the petition. The United States District Court for the Northern District of Texas, Amarillo Division, dismissed respondent, Williams' petition in Bankruptcy under Section 75 of the Bankruptcy Act. This judgment of dismissal was reversed by the United States Circuit Court of Appeals for the Fifth Circuit on the ground that Williams was a farmer within the meaning of Section 75 (r) and remanded to the District Court for the usual proceedings in bankruptcy under Section 75. The judgment of the Circuit Court of Appeals was entered on December 13, 1941 (Tr. 195). A Petition for Re-hearing was filed by these petitioners on the 2nd day of January, 1942 (Tr. 196), and the same was denied on January 12, 1942 (Tr. 209). Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by Acts of February 13, 1925, c. 229, Section 1 (43 Stat. 938, 28 U. S. C. A. Section 347). *First National Bank and Trust Company* v. *Beach,* 301 U. S. 435, 57 Sup. Ct. 801, 81 L. Ed. 1206.

III.

Statement of the Case.

This has already been stated in the preceding petition under "Statement of the Matter Involved", page 2, which is hereby adopted and made a part of this Brief.

IV.

Specifications of Error.

1. The Honorable Circuit Court of Appeals erred in holding that Debtor Williams, whose only activities in relation to his lands consist of leasing the same under oral and written leases to third persons for cash and grain rentals and performing the usual activities of a landlord, is a farmer within the definition enumerated in Section 75 (r) of the Bankruptcy Act.

2. The Honorable Circuit Court of Appeals erred in holding that one who receives the principal part of his income from leasing lands to tenants for a consideration of cash rent or crop rent is tantamount to, or is the same as, one who receives the principal part of his income from one or more of the specific personal farming activities enumerated in Section 75 (r) of the Bankruptcy Act.

3. The Honorable Circuit Court of Appeals erred in holding that a landlord sixty-eight years of age, who maintains a residence and office in Amarillo, Texas, who up to recent years managed properties for estates and individuals, procured right-of-way for the Rock Island Railroad, bought and sold lands on commission, who owns no livestock of any description and no farming implements or implements of husbandry, but who owns an interest in a ranch of 8,156 acres in Hutchinson and Moore Counties, Texas, which is leased for cash rent to a tenant and who owns three farms,

in Potter County, Texas, Sherman County, Texas, and Texas County, Oklahoma, which are leased to tenants for share rent, and who visits his lands to see that he receives his share of the crop rent, and who discusses conditions of erosion with his tenants, and who in one instance in 1940 hired third parties to combine some wheat that was left uncut by a tenant who abandoned the premises, and who in 1938 in one isolated instance leased land to a tenant and under the terms of said lease furnished seed and fuel for a one-half interest in the crops, and who in one instance in the past five years scattered by the handful some grasshopper poison, is an "individual who is primarily bona fide personally engaged in producing products of the soil" or the receipt of the rentals that accrue under the leases on his lands makes him one "the principal part of whose income is derived from" being "primarily bona fide personally engaged in producing products of the soil", within the compass of the definition of farmer contained in Section 75 (r) of the Bankruptcy Act.

4. The Honorable Circuit Court of Appeals erred in holding in substance and effect that the primary *bona fide* personal farming activities of a tenant constituted by themselves the personal engagement in such activities by such tenant's landlord.

V.

ARGUMENT.

Summary Under Argument.

Point A: A landlord owning no livestock or poultry or farm implements whatsoever, whose only activities in relation to his lands consist of (1) leasing the same under oral and written leases to tenants for cash rental and for a percentage of crops produced by the tenant, (2) going upon and visiting his lands on occasion, (3) advising with his

tenants concerning erosion, which is the subject of one covenant of his leases, (4) in one instance, a year prior to filing his petition, contracting with a third party to combine some wheat left uncut by a tenant who abandoned the premises, (5) in one isolated instance, two years prior to filing his petition, leasing one tract of land upon terms whereby he furnished seed and fuel for one-half of the crops produced by the tenant, and (6) in one instance in the five years prior to filing his petition, scattering by the handful some grasshopper poison, is not "primarily bona fide personally engaged" in any of the farming activities enumerated in Section 75(r) of the Bankruptcy Act.

Point B: A landlord owning no livestock or poultry or farm implements whatsoever, who leases his lands to tenants for a cash rental and for a percentage of the crops produced by the tenant, who is not primarily *bona fide* personally engaged in producing products of the soil, or primarily *bona fide* personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, is not a farmer within the definition of Section 75 (r) of the Bankruptcy Act, even though the principal part of the income of such landlord be derived from such rentals.

Argument Under Point A.

The relevant Statute involved herein is Section 75 (r) of the Bankruptcy Act, which provides:

> "For the purposes of this section, and section 22 (b), the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also an individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products

> in unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The decision and holdings of the Circuit Court of Appeals herein was to the effect that a landlord who leased all of his ranch lands to a tenant for cash rental and who leased all of his farm lands to tenants for a percentage of the crops produced by the tenants is one who is "primarily bona fide personally engaged in producing products of the soil", so as to qualify the landlord as a "farmer" under the first section of the definition quoted above.

This holding of the Circuit Court of Appeals is in direct conflict with the prior decision of the Ninth Circuit Court of Appeals in the case of *Shyvers* v. *Security First National Bank of Los Angeles*, 108 Fed. (2d) 611, (9th C. C. A.) 126 A. L. R. 674, Writ of Certiorari denied March 4, 1940, 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015. The debtor in the *Shyvers* case leased her farm properties to tenants and collected the rentals through her agents and attorneys. One of the contentions of the landlord Shyvers was that she was personally engaged in producing products of the soil, even though she did not personally plow the land and plant the seed. The Court held that her status as a landlord did not qualify her as being personally engaged within the meaning of the definition. In that connection the Court said:

> "Is appellant primarily personally engaged in farming? We think she is not. She argues that she is a farmer even though she does not personally plow the ground and plant the seed. We agree that the words 'bona fide primarily personally engaged' do not mean without any assistants. However, neither do

> they encompass an absentee landlord. Appellant's operations consist of collecting her rentals, rather than farming the soil."

The Fifth Circuit Court of Appeals in the present case attempted to distinguish the *Shyvers* case on the ground that the landlord Williams' activities in connection with the land consisted of something more than renting his land and collecting his rentals. An examination of the facts found in the opinion and those contained in the record reflects, however, that Williams' activities related either to the collection of his rentals or the protection of his reversionary interest in the land so that the attempted basis of distinction does not exist.

Williams' lease contracts reserved to him as a landlord one-third of the crops produced and raised by the tenants, delivered free of cost at the elevator. Williams' normal landlord activities in going upon the land during harvest time at most related to the collection of his crop rental. The two isolated instances where he ordered a tenant to return and harvest a portion of the land left unharvested, and where he hired a third person to harvest a portion of the crop which the tenant had abandoned, are instances in which the tenant had failed to perform the lease contract to deliver the landlord's portion of the crops raised after harvest to the elevator free of cost, and were not in the usual course of farming, but for the purpose of securing to him as landlord the rental considerations provided in the lease. Advising with his tenants concerning wind and water erosion involved the protection of the landlord's reversionary interest in the land and pertained to the contractual obligation of the tenant to protect the land from such erosion. Every activity mentioned concerned Williams' rights as a landlord as opposed to the actual farming activities which were conducted by the tenants with full possessory rights and full control and supervision of the

planting, cultivating and harvesting of the crops under the lease contracts.

Thus, no basis for distinction exists between the *Shyvers* and the *Williams* cases and the two are in direct conflict with one another as to what constitutes personal engagement in producing products of the soil. A similar conflict exists between the holding in the *Williams* case and the holding of the Fifth Circuit Court of Appeals in the prior case of *Baxter* v. *Savings Bank of Utica, N. Y.*, 92 Fed. (2d) 404. In the *Baxter* case the debtor actually managed the farm properties and had the superintendence of the farming operations, but the Court held that he was not a farmer within the meaning of the definition quoted above and that his occupation was more accurately described as "property management", although it was true he might "have performed some of the functions of a farmer".

In the present case the landlord Williams did not have even the superintendence over any of the farming operations, but occupied the pure and simple position of a landlord. The decision of the Circuit Court of Appeals in this case is for the same reason in conflict with the contemporaneous decision of the same Court in the case of *Dimmitt* v. *Great Southern Life Insurance Company,* 124 Fed. (2d) 40. In the *Dimmitt* case the debtor leased his lands for a cash rental and the Court held that Dimmitt's activities in leasing his lands and receiving his rentals were not such as to constitute personal engagement in any of the farming activities enumerated in the definition. There is no personal engagement by the landlord in producing products of the soil whether the land be rented to tenants for cash rent or for a percentage of the crops produced by the tenant. The distinction between the two types of leases rests in the degree of interest on the part of the landlord in the crops produced on the land by the tenant. Under a cash lease the amount of the rental consideration is deter-

mined and after that determined sum is paid the landlord has no personal interest in the crops produced during the demised term. Under the crop lease the amount of the rental consideration is undetermined and the landlord has a continuing personal interest in observing the condition of the crops produced by the tenant until the landlord's percentage interest is delivered to his credit in the elevator, although the landlord performs no function or activity in regard to such production. Thus, no basis for distinction exists between the *Dimmitt* case and the *Williams* case, and the two are in direct conflict with each other.

These conflicts should be resolved by this Court. The superficial distinction attempted by the Fifth Circuit Court of Appeals is not based on substantial differences in the material facts in the cases and the refusal of this Court to take jurisdiction in this case would leave the status of landlords under Section 75 of the Bankruptcy Act in intolerable confusion. The importance of finally settling this Federal question is fully set forth in Reason III in the Petition and need not be further elaborated upon in this Brief.

Argument Under Point B.

The Circuit Court of Appeals in this case found as a fact that the principal part of the landlord Williams' income was derived from the rental of his farm properties. While the Circuit Court of Appeals apparently based its decision on the conclusion that debtor Williams was personally engaged in the production of products of the soil, it might be contended under this finding that the judgment could be supported on the theory that Williams was a farmer within the second portion of the definition contained in Section 75 (r), which reads, "or the principal part of whose income is derived from any one or more of the foregoing operations." If such was the basis of the judgment of the Circuit Court of Appeals in this case, such judgment is in

direct conflict with the opinion of the Ninth Circuit Court of Appeals in the case of *Shyvers* v. *Security First National Bank of Los Angeles*, 108 Fed. (2d) 611 (9th C. C. A.) 126 A. L. R. 674, Writ of Certiorari denied March 4, 1940, 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015. In the *Shyvers* case the debtor received the principal part of her income from leasing farm lands to tenants who performed farming operations thereon. The Court held that the landlord in such case was not a "farmer" within the second portion of the definition quoted above. The Court's holding appears from the following quotation from the opinion:

> "Next, it is necessary to consider whether or not the appellant is a 'farmer' under the second portion of the definition, as one 'the principal part of whose income is derived from any one or more of the foregoing operations'.
>
> "It should be noted in particular that the Act does not define a farmer as one whose principal income is derived from farm properties; but the definition instead refers to 'the foregoing operations.'
>
> "What are the 'foregoing operations'? An examination of the statute will disclose that each 'foregoing operation' is meticulously required to be a personal one. We conclude that to come within this subdivision, the debtor must personally be engaged in farming. It is not enough to own farm lands which he or she leases to others who operate them, while the debtor resides across seas. And this appears to be the very spirit of the law, which was enacted during a period of profound depression among the farmers of this country, the Act itself providing that it is one of emergency."

No possible distinction in this regard can be made between the *Williams* and the *Shyvers* cases, and the conflict between these decisions of the Fifth and Ninth Circuit Courts of Appeal should be resolved by this Court so that the large class of individuals who occupy the position of landlords receiving the principal part of their income from leasing farm properties and their creditors may know their status

under the Frazier-Lemke Act. The importance of finally determining this question of the construction of this most important Federal Statute is fully set forth under Reason III in the petition and need not be elaborated upon in this Brief.

Conclusion.

It is respectfully submitted that by reason of the irreconcilable conflict between the Circuit Courts of Appeal and the importance of the Federal question involved concerning the proper construction of Section 75 (r) of the Bankruptcy Act with respect to the inclusion thereunder of landlords as "farmers", the Supreme Court of the United States should exercise its jurisdiction and grant a Writ of Certiorari under the seal of this Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in said Circuit Court had in the case entitled and numbered on its docket, No. 9894, *Joseph Lankston Williams, Debtor, Appellant,* v. *Great Southern Life Insurance Company, et al., Appellees,* to the end that this cause may be reviewed and determined by this Court and that the judgment herein of the United States Circuit Court of Appeals, Fifth Circuit, be reversed and the judgment of the United States District Court, Northern District of Texas, Amarillo Division, be affirmed.

Respectfully submitted,

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21

Supreme Court of the United States

OCTOBER TERM, 1941

No. 970

GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL

vs

JOSEPH LANKSTON WILLIAMS

Reply To Petition For Writ of Certiorari To The United States Circuit Court of Appeals For The Fifth Circuit and Brief In Support Thereof.

BEN P. MONNING
and
E. BYRON SINGLETON
Attorneys for Joseph
Lankston Williams.

Supreme Court of the United States

OCTOBER TERM, 1941

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GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL

vs

JOSEPH LANKSTON WILLIAMS

Reply To Petition For Writ of Certiorari To The United States Circuit Court of Appeals For The Fifth Circuit and Brief In Support Thereof.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes respondent, JOSEPH LANKSTON WILLIAMS, and submits this his answer to the petition of GREAT SOUTHERN LIFE INSURANCE COMPANY, a corporation and the petition of PHILLIPS PETROLEUM COMPANY, a corporation, for issuance of a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered on the 13th day of December, 1941. The Circuit Court entered its judgment reversing the United States District Court for the Northern District of Texas, and

remanding the case for further proceedings under proceedings for composition or extension in bankruptcy.

STATEMENT OF MATTER INVOLVED

Respondent cannot agree with the statement submitted by the petitioners as to the matter involved in the application for certiorari. The opinion of the Circuit Court of Appeals and its finding of facts, as supported by the record, evidences that from all of the facts and from all of the circumstances that Joseph Lankston Williams, your respondent, was a "farmer" within the definition of a farmer under Section 75(r) of the Bankruptcy Act. (11 U.S.C.A., Sec. 203(r).)

The Circuit Court of Appeals devoted practically the entire of its opinion to the statement of facts existing in this particular case, (Record 191-195), and therein outlined that each case must be determined according to its own facts, (Record 194). In determining the question of whether this particular farmer is or is not pursuing the occupation of farming as his chief livelihood, or deriving the principal part of his income therefrom, (Record 194), the Circuit Court considered the particular facts surrounding the respondent herein.

BASIS FOR DENYING JURISDICTION

No where does it appear in the opinion of the Circuit Court of Appeals that the position of respondent was determined to be that of a farmer because he was a "landlord", but, to the contrary, the Circuit

Court of Appeals' opinion commences "There is no dispute as to the facts." (Record 192), and thereafter follows with a three page statement of the various things that respondent did concerning periodic visits to the three farms located in separate counties seeing that the crops were duly harvested, the farming whereby respondent furnished seed wheat, gasoline and oil, the manner of respondent's discussion and advice with tenants as to the best method of plowing and cultivating the lands so as to prevent erosion from wind and rain, together with respondent's statement and position that he stood ready to help in any way he could to save time and expense in operations, the distinct arrangements for pasturing of milk cows, the completion of crops because the tenant walked off, the personal distribution of poison for grasshoppers, and the fact that respondent had no other occupation and no other income except the occupation concerning and the income derived from the farms and the ranch. (Record 192-193). Many other factors were submitted by the Circuit Court of Appeals and the concluding sentence to the resume of the facts to evidence the position of the Circuit Court was, "Each case must be determined according to its own facts." (Record 194)

The opinion of the Court was not in conflict with but was in agreement with the case of SHYVERS vs. SECURITY FIRST NATIONAL BANK, 108 Fed. (2d) 611, and the case of FIRST NATIONAL BANK AND TRUST COMPANY vs. BEACH, 301 U. S. 435.

NO CONFLICT OF OPINION TO GRANT JURISDICTION

The opinion of the Circuit Court clearly considered the SHYVERS and BEACH cases, and predicated upon the facts appearing above evidenced no conflict whatsoever therewith. This is definitely shown from the opinion of the Court as follows:

"The case of SHYVERS VS. SECURITY FIRST NATIONAL BANK, 108 F. (2d) 611 by the Ninth Circuit, relied on by the lower court in the present case was an extreme instance, where the owner lived in England with a husband engaged in another and distinct business. She did nothing but receive the rents collected by her attorneys in this country who handled the property as her correspondents and agents. The conclusion which we reach here is no different in principle from that case. We hold as it does, that the claimant's business must be that of a farmer, as said by the Supreme Court in FIRST NATIONAL BANK AND TRUST COMPANY VS. BEACH, 301 U. S. 435, with the 'major portion of his time' devoted to one of the activities named in the law; or the principal part of his income must be derived from such an operation which he conducts in the manner above described, even though he does not devote the greater part of his time thereto. He does not become a farmer by merely receiving rents or revenues without more, where he has another business in which he is primarily engaged, although such rents and income may exceed that of such other business or occupation."

In the present case, we think the facts show that all of Williams' business activities were devoted to his farming, and that his entire income was derived from farming operations.

(fol. 197) For the reasons assigned, the judgment below is reversed, and the cause remanded for further proceedings not inconsistent with the views herein expressed."

Applicants for writ of certiorari also set up as cases which conflict with the Williams holding the opinions of DIMMITT V. GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL, 124 Fed. (2d) 40; BAXTER V. SAVINGS BANK OF UTICA, N. Y., ET AL, 92 Fed. (2d) 404; and IN RE OLSON, 21 Fed. Sup. 504. The distinguishing factors in these cases are self evident.

In the Dimmitt Case, from the opinion, we read:

"It would seem clear therefore that Dimmitt was not engaged in farming in so far as the ranch was concerned. It was leased for an annual money rental payable in advance and all that he did was to receive his part of the rental after payment of repairs and upkeep. It is also clear that he was not actually or technically engaged in farming so far as the property belonging to the corporation was concerned. He could not in his own name invoke the benefits of this law for a corporation in which he owned only one share of the stock. Unlike Williams, he did not have or carry on the business of farming with respect to any of the lands involved. He simply collected his share of the rents and received his part of the dividends or earnings from the corporation."

From the Baxter opinion we read:

"The bankrupt, appellant, resided and practiced law in Utica, N. Y., a great many years prior to February, 1935, at which time he moved to Grantville, Ga. In October, 1935, he filed his petition under section 75, seeking to effect a composition or extension of his debts. The usual proceedings were had on this petition, the schedule of assets and appraisal disclosing that farm property constituted only a small part of appellant's estate, and that the potential income from his farming operations was very small as compared with that of his other property."

It is to be noticed further that the Baxter opinion is by this same Circuit Court of Appeals and that it was fully considered in the briefs before such Circuit and the distinguishing features were recognized by the Court.

From the Olson opinion we notice these facts, which differentiate it from the Williams case, and which facts appear in the opinion:

"The debtor in this case resides permanently in the city of East Moline, Ill., and the evidence shows that substantially all of his time is devoted to activities other than producing products of the soil. So far as the East farm is concerned his status is that of a landlord without any qualifications. The case is not similar to First National Bank & Trust Co. v. Beach, 301 U.S. 435, 57 S. Ct. 801, 804, 81 L. Ed. 1206, where the debtor resided upon the farm and personally devoted his labor to producing products of the soil and rented a part to others. Mr. Justice Cardozo in that case said: 'The picture, however, is distorted if Beach

is looked upon as a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and made his not less, but more a farmer than he would have been without them.' In the case at bar the debtor's labor is primarily not devoted to the products of the soil."

QUESTIONS PRESENTED

No question whatsoever is presented in the petition for writ of certiorari. The only thing that was considered by the Circuit Court of Appeals is set forth as follows:

I.

Was respondent, in view of the series of farming facts appearing in Record 192-194, a farmer?

REASONS FOR REFUSAL OF THIS WRIT

I.

The opinion of the Circuit Court of Appeals, in its holding that claimant's business must be that of a farmer, is in accord with the opinion of the FIRST NATIONAL BANK AND TRUST COMPANY VS. BEACH, 301 U. S. 435, with the major portion of the time devoted to one of the activities named in the law, or the principal part of his income derived from such an operation which the farmer conducts in the manner above described. The Circuit Court found that Joseph Lankston Williams, from all of the facts, devoted all of his business activities to farming and that his entire income was derived from farming operations.

II.

There is no conflict whatsoever with the case of SHYVERS VS. SECURITY FIRST NATIONAL BANK, 108 Fed. (2d) 611, because the facts in the Shyvers case were one extreme instance where the owner of land did nothing other than live in England with a husband engaged in another and distinct business and the receipt of rent collected by her attorneys in this country, and that her attorneys in this country handled the property as her correspondents and agents. And the Circuit Court in the instant case held, as the Shyvers case did, that the claimant's business must be that of a farmer and found from all of the facts that Williams' business activities were devoted to his farming and that his entire income was derived from farming operations.

The opinion in the DIMMITT VS. GREAT SOUTHERN LIFE INSURANCE COMPANY, et al, 121 Fed. (2d) 40, rendered on the same day by the same Circuit Court of Appeals, clearly distinguishes activity which involves only the receipt of rentals, as in the Dimmit case, from the facts in the case of respondent Williams, whose time and energy was devoted to and his income was derived from farming operations.

III.

The judgment and decision of the Circuit Court of Appeals herein is one wherein there is no dispute as to the facts, and this series of facts were looked to by the Circuit Court and the determination of Williams as a farmer was made according to such facts.

There is nothing in the opinion of the Circuit Court that differentiates it from the line of decisions of the Supreme Court of the United States and of the Circuit Courts, which determine from the facts of a particular case whether or not a man is a farmer. The points involved were points of fact and no point of law whatsoever was involved.

PRAYER FOR DISMISSAL

WHEREFORE, your respondent prays that no writ of certiorari issue from this court and that such application for a writ of certiorari be denied, and that the opinion of the Circuit Court of Appeals may thus be allowed to stand, which reversed and rendered the judgment of the District Court for the Northern District of Texas, Amarillo Division.

Dated this 13th day of March, 1942.

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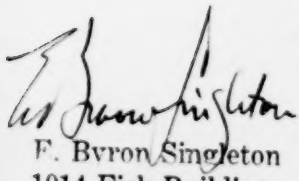

E. Byron Singleton
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Of Counsel

BRIEF IN SUPPORT OF REFUSAL OF THE PETITION FOR WRIT OF CERTIORARI

I.

STATEMENT OF THE CASE FROM OPINION OF COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, rendered on December 13, 1941, appears at page 191 of the Record, and is reported in 124 Fed. (2d) 38. The statement of Facts completely appears in such opinion as follows:

"The question in this case is as to whether the appellant is a farmer within the meaning of subsection (r) of Section 75 of the Bankruptcy Law.

There is no dispute as to the facts, Williams, among other properties, owned an undivided three-fourths interest (fol. 193) in 6961 acres, and a one-half interest in 1195 acres, or a total of 8156 acres of land, comprising a ranch; the other undivided interest belonged to one Dimmitt, who has a similar appeal before this court. The ranch was under lease for a yearly money rental of $2453.10, out of which repairs and expenses for the upkeep of the place were paid. Appellant's proportionate share of rents and royalties of approximately $2400 per year from a mineral lease to Phillips Petroleum Company upon this ranch were not paid to him, but were retained by the lessee under a trust agreement to protect it against a prior mortgage on the property.

He also owned three other farms, the first embracing 254 acres, situated in Texas County, Okla-

homa; the second consisting of five or six hundred acres in Sherman County, Texas, and the third comprising about five hundred acres in Potter County, Texas, situated some seven or eight miles from Amarillo, Texas, where he lived. All three were worked by tenants on a share crop basis of one-third, and produced mainly wheat. Williams resided and kept an office in the city of Amarillo, but had no other business. He visited the Potter County farm from one to three times a week, and daily during harvesting season; the other two from one to two times a month, but in harvesting season he would go there several times a week to see that the crops were duly harvested, and his share was delivered to the elevator. In 1940, he had to order the tenant on one of these places to return and go over a portion of the land which had been insufficiently harvested. In 1938, he furnished seed wheat, gasoline and oil for planting, and receiving one-half of the crop on the Potter County farm. He discussed and advised with his tenants as to the best method of plowing and cultivating the land so as to prevent erosion from wind and rain, and stated that he stood ready to help in any way that he could to save time and expenses in operations. On the Sherman (fol. 194) County farm, he made "distinct" arrangements with his tenant for pasturing of milk cows on a part of the land. He had to take charge of the Oklahoma farm in 1940, and finish the crop because the tenant walked off. The crop was harvested through hired labor on the basis of one-half to the man who gathered it. Appellant personally distributed some poison to kill grasshoppers. As stated, he has no other occupation and no

income except that derived from these farms and the ranch which he owns in indivision with Dimmitt.

The conditions and relations of appellant to these properties have existed for several years.

The Supreme Court in BENITEZ V. BANK OF NOVA SCOTIA, 313 U. S. 270 has decided that the definition of a farmer in sub-section (r) of Section 75 must prevail over that of Section 1 (17) or the Chandler Act, in proceedings affecting farmers. Hence, if under the facts of this case, Williams falls in either catagory of that sub-section, he is entitled to proceed, and the decision below should be reversed. Sub-section (r) reads:

'For the purposes of this section, section 22 (b) and section 202, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.'

(fol. 195) The language of this provision does not say specifically that the claimant to relief must actually till the soil with his own hands or labor. He may be 'primarily bona fide personally engaged' in any one of those operations, if that is his business or occupa-

tion, or if the major part of his time and attention are given to its supervision and direction, although the actual work be performed by day labor, those employed by the month, commonly known as 'wage hands', or by share croppers, who cultivate the land for a share of the crops. Congress undoubtedly knew that a large part of farming operations are carried on in this manner, that is, without the owner or farmer doing the manual labor himself. This Act was an emergency measure and intended to give relief to that class of citizens who were engaged in agricultural pursuits as a livlihood or business, and to restrict it to those small operators who themselves till the soil would exclude, as we know from common knowledge, a very large segment of the farming population. If the doing of physical labor were the test, the owner of farm properties, no matter how extensive, could by the simple expedient of going upon and cultivating a few acres with his own labor, bring under the protection and administration of the Bankruptcy Court thousands of acres, even though ninety-five per cent were cultivated by share croppers, lessees paying money rentals, or what not. Once the status as a farmer is fixed, all of his property wherever situated, and regardless of its nature, is drawn under the jurisdiction of the Bankruptcy Court in a proceeding of this kind. Sub-section (n) Sec. 75. Again, if through illness or misfortune, the owner became physically unable to perform farm labor, he would cease to be a farmer through no fault of his own, because he could not till the soil. Neither do we think that the operator can acquire or lose the status of a farmer by the fact alone of establishing his residence upon or mov-

ing from the farm lands. All of these matters are but circumstances tending to support or dispute the fact that he is or (fol. 196) is not pursuing the occupation as his chief livelihood, or deriving the principal part of his income therefrom. Even the discovery of oil or other minerals upon the farm in sufficient quantities to exceed returns from products of the soil, would not serve to convert the farmer into an oil operator, so long as he continued unchanged his relation to the operations of the farm. Each case must be determined according to its own facts."

II.

NO CONFLICT OF OPINION TO GRANT JURISDICTION

The opinion of the Circuit Court clearly considered the SHYVERS and BEACH cases, and predicted upon the facts appearing above evidenced no conflict whatsoever therewith. This is definitely shown from the opinion of the Court as follows:

"The case of SHYVERS V. SECURITY FIRST NATIONAL BANK, 108 F. (2d) 611 by the Ninth Circuit, relied on by the lower court in the present case was an extreme instance, where the owner lived in England with a husband engaged in another and distinct business. She did nothing but receive the rents collected by her attorneys in this country who handled the property as her correspondents and agents. The conclusion which we reach here is no different in principle from that case. We hold as it does, that the claimant's business must be that of a farmer, as said by the Supreme Court in FIRST

NATIONAL BANK AND TRUST COMPANY V. BEACH, 301 U. S. 435, with the 'major portion of his time' devoted to one of the activities named in the law; or the principal part of his income must be derived from such an operation which he conducts in the manner above described, even though he does not devote the greater part of his time thereto. He does not become a farmer by merely receiving rents or revenues without more, where he has another business in which he is primarily engaged, although such rents and income may exceed that of such other business or occupation.

In the present case, we think the facts show that all of Williams' business activities were devoted to his farming, and that his entire income was derived from farming operations.

(fol. 197) For the reasons assigned, the judgment below is reversed, and the cause remanded for further proceedings not inconsistent with the views herein expressed."

Applicants for writ of certiorari also set up as cases which conflict with the Williams holding the opinions of DIMMITT V. GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL, 124 Fed. (2d) 40; BAXTER V. SAVINGS BANK OF UTICA, N. Y., ET AL, 92 Fed. (2d) 404; and IN RE OLSON, 21 Fed. Sup. 504. The distinguishing factors in these cases are self evident.

In the Dimmitt Case, from the opinion, we read:

"It would seem clear therefore that Dimmitt was not engaged in farming in so far as the ranch was

concerned. It was leased for an annual money rental payable in advance and all that he did was to receive his part of the rental after payment of repairs and upkeep. It is also clear that he was not actually or technically engaged in farming so far as the property belonging to the corporation was concerned. He could not in his own name invoke the benefits of this law for a corporation in which he owned only one share of the stock. Unlike Williams, he did not have or carry on the business of farming with respect to any of the lands involved. He simply collected his share of the rents and received his part of the dividends or earnings from the corporation."

From the Baxter opinion we read:

"The bankrupt, appellant, resided and practiced law in Utica, N. Y., a great many years prior to February, 1935, at which time he moved to Grantville, Ga. In October, 1935, he filed his petition under section 75, seeking to effect a composition or extension of his debts. The usual proceedings were had on this petition, the schedule of assets and appraisal disclosing that farm property constituted only a small part of appellant's estate, and that the potential income from his farming operations was very small as compared with that of his other property."

It is to be noticed further that the Baxter Opinion is by this same Circuit Court of Appeals and that it was fully considered in the briefs before such Circuit and the distinguishing features were recognized by the Court.

From the Olson opinion we notice these facts,

which differentiate it from the Williams case, and which facts appear in the opinion:

"The debtor in this case resides permanently in the city of East Moline, Ill., and the evidence shows that substantially all of his time is devoted to activities other than producing products of the soil. So far as the East farm is concerned his status is that of a landlord without any qualifications. The case is not similar to First National Band & Trust Co. v. Beach, 301 U.S. 435, 57 S. Ct. 801, 804, 81 L. Ed. 1206, where the debtor resided upon the farm and personally devoted his labor to producing products of the soil and rented a part to others. Mr. Justice Cardozo in that case said: 'The picture, however, is distorted if Beach is looked upon as a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and made him not less, but more a farmer than he would have been without them.' In the case at bar the debtor's labor is primarily not devoted to the products of the soil."

III

ARGUMENT

Petitioners seek to inject non-existent facts in their petition for writ of certiorari. Petitioners seek to isolate a few of the facts in the record and to draw their complete conclusions therefrom, without regard to the entire record as considered by the Circuit Court of Appeals. The proper determination of the relationship of Joseph Lankston Williams to the soil appears in the opinion of the Circuit Court of Appeals; and his relation, in turn, to hired hands and share

croppers evidenced that Williams consulted with them and discussed and advised with them (Record 192) as to the best method of plowing and cultivating the land so as to prevent erosion from wind and rain, and he stood ready and did help in anyway he could to save time and expense in operations. (Record 192) Respondent, Williams, likewise, as reflected from the entire record, devoted his full and entire time and energy and physical efforts to procure the products from the soil by the use of all the scientific devices and farming methods with which he became ecquainted during the entire span of his life, and thus the facts show that all of Williams' business activities were devoted to his farming, (Record 195) and his entire income derived from farming operations (Record 195). The record reflects that Williams devoted his time and energy and obtained his income from approximately 9510 acres of land situated in Texas Counties of Hutchinson, Moore, Potter and Sherman, and the Oklahoma County known as Texas County, (Record 192) that the production from the three farms was mainly that of wheat, (Record 192) and that Williams' complete time and business activities were exercised between these various counties and between these various farms. (Record 192)

CONCLUSION

The statement of facts speak for themselves; the color, tenor and effect of the facts in the Joseph Lankston Williams case were determined from all of the various angles to clearly place Williams within the definition of a farmer, not only from the stand-

point that his entire time and personal energy was devoted to farming but, likewise, because all of his income was derived from farming operations.

WHEREFORE, its is respectfully submitted that there is no conflict for consideration before this Honorable Court and that the opinion of the Fifth Circuit should be allowed to stand, in which opinion the Circuit Court reversed the judgment of the United States District Court for the Northern District of Texas, Amarillo Division.

Respectfully submitted,
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A copy of this Reply and Brief is being mailed to Mr. Fred R. Switzer, Houston, Texas, Mr. C. C. Small, Mr. Binford Arney, and Mr. C. C. Small, Jr., Austin, Texas, Attorneys for Great Southern Life Insurance Company, and to Mr. Don Emery and Mr. Rayburn L. Foster, Bartlesville, Oklahoma, Mr. E. H. Foster and Mr. Warren M. Sparks, Amarillo, Texas, Attorneys for Phillips Petroleum Company.

E. Byron Singleton
Of Counsel for Joseph Lankston Williams.

Supreme Court of the United States

OCTOBER TERM, 1941

NO. 970

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v.

JOSEPH LANKSTON WILLIAMS

PETITION FOR REHEARING RE PETITION FOR WRIT OF CERTIORARI

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FIRM FOUNDATION—AUSTIN

Supreme Court of the United States

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GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL,

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JOSEPH LANKSTON WILLIAMS

PETITION FOR REHEARING RE PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Great Southern Life Insurance Company, a Texas corporation, and Phillips Petroleum Company, a Delaware corporation, pray this Court for a rehearing of their Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, filed on the 24th day of February, 1942, which petition was denied on the 6th day of April, 1942, and in support thereof respectfully show:

I.

The Honorable Supreme Court of the United States erred in not granting the Writ of Certiorari which would have settled an important question of Federal law as to whether that large class of individuals who as landlords lease all of their lands to tenants are "farmers" within the definition contained in Section 75(r) of the Bankruptcy Act, and the granting of which writ would also have settled the status of such class under the Frazier-Lemke Emergency Act preventing intolerable confusion which results from the decisions of the various Circuit Courts of Appeal and inferior courts.

II.

The denial of the petition for certiorari in the instant case is assumed to have been based upon either (1) an acceptance by the Supreme Court of the interpretation of Section 75 (r) as made by the Circuit Court or upon (2) that portion of the Circuit Court opinion which concluded as a proposition of law that the debtor was personally engaged in farming. Either basis is wholly foreign to the fact situation as stated by the Circuit Court.

Basis (1). The Circuit Court's interpretation is:

> "He may be 'primarily bona fide presonally engaged' in any one of those operations, if that is

> his business or occupation, or if the major part of his time and attention are given to its supervision and direction, although the actual work be performed by day labor, those employed by the month commonly known as 'wage hands' or by share croppers who cultivate the land for a share of the crops."

The facts in the instant case even as reported in the opinion itself are wholly foreign to the interpretation or construction quoted above for the debtor exercised no supervision nor direction of any farming activity, all his lands were leased to tenants, and no work whatsoever was performed by day labor, wage hands, or share croppers. The construction above might well apply to a fact situation involving a "cropper" who is a person hired by the landowner to cultivate the land for the landowner and to receive for his labor a share of the crop which he works to make or harvest, and who is as much a servant of the landowner as if his wages were payable in money. A tenant on the other hand has an estate in the land for his term and if he pays a share of the crop as rent it is he who divides the crop which he has raised at his sole expense and turns the landowner's share over to the landowner, having until such division the right of possession of the whole, and being under no supervision nor direction of the landlord whatsoever. The facts in the instant case and those stated in the opinion deal solely with tenants while the construction of the statute in question pertains to croppers or hired hands, all of which will produce great confusion unless this court takes jurisdiction.

Basis (2). The Circuit Court concluded as a proposition of law that:

> "In the present case, we think the facts show that all of Williams business activities were devoted to his farming, and that his entire income was derived from farming operations."

The Circuit Court also states that its opinion is not in conflict with *Shyvers* v. *Security First National Bank of Los Angeles*, 108 F. (2d) 611, Writ of Certiorari denied March 4, 1940, 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015, and reaffirms the Shyvers opinion. The same Circuit Court on the same date it rendered the opinion in the instant case held in *Dimmitt* v. *Great Southern Life Insurance Company, et al*, 124 F. (2d) 40, that a landowner who leases his lands to tenants for cash rent is not engaged in farming.

Obviously there had to be a material distinction in the minds of the Justices of the Circuit Court between the Williams case, the Shyvers case and the Dimmitt case. The confusion which now exists arises not from the legal conclusion quoted above; but arises because the facts found by the Court do not support the distinctions attempted. The three cases reach opposite legal conclusions on facts which are identical in their legal significance. A reading of the facts found by the Court in the instant case clearly reflects that the debtor's activities were those of a landlord just as were the activities of debtor Shyvers and debtor Dimmitt. In all three cases

all of the lands were leased to tenants who had complete dominion and control of the leased premises; and no hired hands, wage hands or croppers are involved.

The facts in the three cases leave no basis for distinction unless it be:

(a) The distance which the landlord lives from his lands, or

(b) Leasing and collecting rentals through agents of the debtor instead of by the debtor in person, or

(c) Visitations to the lands and a discussion of farm activities, or

(d) Leasing lands to tenants for a consideration of a portion of the crops produced by the tenants in lieu of a consideration of cash rentals.

If the distinctions mentioned above, or any of them, be the basis of a proper legal distinction classifying some landlords as farmers under the exact verbiage of Section 75 (r) and classifying other landlords as not farmers under the same verbiage, then the judgment of the Supreme Court in refusing the petition for writ of certiorari is correct and this petition should be likewise denied.

If on the other hand the distinctions (a), (b), (c)

and (d) above, be not a proper basis of legal distinction to classifying some landlords as farmers and others as not farmers under the exact verbiage of Section 75 (r) of the Bankruptcy Act, then the judgment of this Court in denying the petition for writ of certiorari is incorrect.

This is true irrespective of the fact that the ultimate opinion of this Court might be that a landlord who receives the principal part of his income from rentals is a farmer, for such a holding would be flatly in conflict with the Ninth Circuit Court in the Shyvers case and with the Fifth Circuit Court in the Dimmitt case, and the public, the bar, creditors and debtors are entitled to be informed as to the correct status of landlords in order to remove the confusion created by the instant case when considered with the Shyvers and Dimmitt cases. Certainly the question of the inclusion or the exclusion of landlords generally or landlords to a limited degree, as "farmers" within Section 75 (r) of the Bankruptcy Act, is one of such importance as to warrant the Court granting the petition for writ of certiorari and determining the question.

WHEREFORE, it is respectfully urged that this Petition for Rehearing be granted and that the Supreme Court of the United States exercise its jurisdiction and grant a Writ of Certiorari under the seal of this Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in

said Circuit Court had in the case entitled and numbered on its docket, No. 9894, Joseph Lankston Williams, Debtor, Appellant, v. Great Southern Life Insurance Company, et al, Appellees, to the end that this cause may be reviewed and determined by this Court and that the judgment herein of the United States Circuit Court of Appeals, Fifth Circuit, be reversed and the judgment of the United States District Court, Northern District of Texas, Amarillo Division, be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Binford Arney, Counsel for Great Southern Life Insurance Company, and I, Warren M. Sparks, Counsel for Phillips Petroleum Company, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

We further certify that a copy of this Petition for Rehearing is being mailed to Ben P. Monning and E. Byron Singleton, 1014 Fisk Building, Amarillo, Texas, Attorneys for Joseph Lankston Williams, Debtor.

Binford Arney

Warren M. Sparks